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United States General Accounting Office

Charles A. Bowsher

Comptroller General of the United States

Milton J. Socolar

Special Assistant to the Comptroller General $\,$

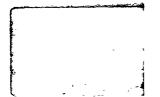
James F. Hinchman

General Counsel

Vacant

Deputy General Counsel

VOLUME IV No. 7



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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full test. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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APPROPRIATIONS/FINANCIAL MANAGEMENT



APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability B-230656 April 4, 1988
Purpose availability
Specific purpose restrictions
Foreign aid programs

Section 569 of the Foreign Operations, Export Assistance and Related Programs Appropriations Act, 1988, Pub. L. No. 100-202, § 101(e), 101 Stat. 1329-131, restricts "United States assistance . . . for Haiti." Assistance is not defined, but the section provides that the term does not include seven itemized programs. The exemption list does not include either the Peace Corps or the Overseas Private Investment Corporation (OPIC). The statute provides no basis to decide that the Peace Corps or OPIC do not fall within its broad prohibition, since these programs constitute "United States assistance."

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-230796 April 8, 1988

Cashiers Relief

> Physical losses Theft

Relief is granted to Ms. Sandra J. Davis, Imprest Fund Cashier for the Oakdale, Louisana, Detention Facility, for a \$3,670.28 imprest fund loss under 31 U.S.C. § 3527(a). Although accountable officers are presumed to have been negligent when a physical loss of funds for which they are responsible occurs, relief is granted because the loss was directly attributable to the seizure by inmates of the detention facility.



APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability B-230110 April 11, 1988 Purpose availability Contracts

An analysis of the scope and effect of section 8093 of the Department of Defense Appropriations Act, 1988, Pub.L. No. 100-202, 101(b) shows that it is a government-wide permanent restriction on using appropriated funds to procure electricity competitively. A comparable provision in section 509 of the Treasury, Postal Service, and General Government Appropriations Act, 1988, Pub. L. No. 100-202, § 101(m), is considerably more limited in its applicability.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Accountable Officers B-230842 April 13, 1988
Certifying officers
Relief
Illegal/improper payments
Overpayments

A supervising disbursing officer is relieved of liability upon showing that he maintained an adequate system of procedures and controls for the avoidance of errors, and that steps were taken to ensure that the system was functioning effectively. The cashier who made the improper payment was adequately trained and supervised. Therefore, the improper payments were not the result of bad faith or lack of due care on behalf of the supervisor.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers Liability

B-226393 Con't April 29, 1988

Statutes of limitation
Effective dates
Illegal/improper payments

The statute of limitations provision set forth in 31 U.S.C. § 3526(c) begins to run when the agency's accounts are "substantially complete" and ready for audit. "Substantially complete" accounts refers to the time when all the documents necessary to raise a charge against the account are in the agency's possession, regardless of whether they have been properly documented or filed.

In cases where an agency cannot raise a charge against an account until it receives a notice of loss, such as a debit voucher from Treasury, the date of the receipt of the debit voucher begins the statute of limitations period. If the exact date of receipt is unknown, the date on the debit voucher will be used as the starting point for the calculation of the statute of limitations period. To the extent that GAO has in the past relied on the recordation date to begin the statute of limitations period, these cases (including 62 Comp. Gen. 91, 97-98 (1982), (B-201286), and B-213874, Sept. 6, 1984) are hereby modified.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Claims Against Government B-230784 April 25, 1988
Burden of proof
Factual issues

Under the claims settlement standards contained in 4 C.F.R. § 31.7, the burden is on the claimant to establish the liability of the United States and the claimant's right to payment. Hence, a supplier of goods ordered by the government must show that the goods were received by the government before its claim for payment may be allowed.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability B-230820 April 25, 1988
Purpose availability
Specific purpose
restrictions
Personal expenses/furnishings

Appropriated funds may not be used to purchase foul weather clothing for Internal Revenue Service employees to wear in the performance of official duties during inclement weather. Expenditures for such items are not authorized by GAO decisions construing 5 U.S.C. § 7903, and no other statutory authority authorized the purchase in question.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Accountable Officers B-226393 April 29, 1988
Disbursing officers
Liability restrictions
Statutes of limitation

Monies paid on debts that had been settled by operation of law prior to the payment being made should be refunded to the accountable officer who made the payment.

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B-230344 April 5, 1988

CIVILIAN PERSONNEL

Leaves of Absence

Annual leave

Unused leave balances

Leave transfer

CIVILIAN PERSONNEL
Leaves of Absence
Sick leave
Unused leave balances
Leave transfer

Former federal employees of Saint Elizabeths Hospital who transferred to the District of Columbia government on October 1, 1987, pursuant to Pub. L. No. 98-621, are not entitled to transfer of their annual and sick leave balances should they return to federal service. An amendment to 5 U.S.C. § 6301 enacted after Pub. L. No. 98-621 limited annual and sick leave transferability for former District of Columbia employees who join the federal government to those individuals who were first employed by the District government before October 1, 1987.

CIVILIAN PERSONNEL

B-230371 April 5, 1988

Travel

Temporary duty
Travel expenses
Return travel
Personal convenience

An employee, who exchanged her airline ticket in order to catch an earlier flight from temporary duty, may not be reimbursed the \$50 fee. The additional expense may be allowed under para. 1-3.4c of the Federal Travel Regulations only when it is more advantageous to the government.



CIVILIAN PERSONNEL

CIVILIAN PERSONNEL
Relocation
Household goods
Shipment
Reimbursement
Eligibility

B-229393 April 1, 1988

Employee separated in 1982 is not entitled to reimbursement for the cost of shipping his household goods from Madrid to Paris incident to his separation. Although the holding in Thelma Grimes, 63 Comp. Gen. 281 (1984), authorizes shipment of household goods to any alternate destination, provided the cost to the government does not exceed the constructive cost of shipment to the employee's place of actual residence, that decision applies prospectively to cases in which the employee's separation was effected after April 10, 1984. The fact that the employee's claim was before the General Accounting Office on that date does not provide a basis for payment.

CIVILIAN PERSONNEL B-229104 April 4, 1988
Compensation
Compensation retention
Administrative regulations

An employee who held a 30-month Foreign Service term appointment with the Peace Corps was not entitled to retained pay when he exercised his statutory reemployment rights and was reemployed at ACTION at a lower rate of pay. The employee's statutory rights define the extent of his agency's obligation to reemploy him in his former position, and there is no authority in the grade and pay retention statute, 5 U.S.C. §§ 5361 et seq., to expand upon this authority. Further, Office of Personnel Management regulations specifically preclude an employee serving under a temporary reassignment from retaining a grade or rate of basic pay held during a temporary reassignment.

B-230404 April 5, 1988

B-229446 April 7, 1988

CIVILIAN PERSONNEL
Compensation
Classification
Appeals
GAO review

CIVILIAN PERSONNEL
Compensation
Retroactive compensation
Eligibility
Adverse personnel actions
Classification

The General Accounting Office lacks jurisdiction to overturn classification determinations by OPM. In any event, we concur with OPM's determination that a government employee is entitled only to the salary of his appointed position regardless of the duties he performed. Furthermore, neither the Classification Act nor the Back Pay Act provides a retroactive right to backpay for past periods of alleged wrongful grade classification.

CIVILIAN PERSONNEL
Compensation
Overpayments
Error detection
Debt collection
Waiver

Employee was erroneously granted a quality step increase to step 6 from step 4, resulting in salary overpayments. Request for waiver under 5 U.S.C. § 5584 (1982) is denied since employee is not without fault in failing to question the increase. Employee's current financial situation should be considered in arranging a reasonable repayment schedule for the amount due, to the extent consistent with 4 C.F.R. § 102.11 (1987).

CIVILIAN PERSONNEL B-2273
Relocation
Travel expenses
Reimbursement
Privately-owned aircraft

Administrative discretion

A transferred employee was authorized to perform travel to her new duty station using her private aircraft which was determined to be advantageous to the government. Officials at the new duty station question the propriety of that determination and the employee's trave. entitlements. Under Federal Travel Regulations para. 1-2.2c(3), such determinations are made on a case-by-case basis before travel is performed and are discretionary. Where such determinations are made and the employee performs that travel, the employee may be reimbursed for the mode of travel authorized.

CIVILIAN PERSONNEL
Relocation
Travel expenses
Privately-owned aircraft
Mileage

Where use of a private aircraft is determined to be advantageous to the government for permanent change-of-station travel, mileage is to be reimbursed under authority of Federal Travel Regulations (FTR) para. 2-2.1, at the rate specified in FTR para. 1-4.2a(3), for the distance between the old and new duty stations as determined under FTR para. 1-4.1b(2).

CIVILIAN PERSONNEL Relocation Per diem rates Computation

B-227382 Con't April 8, 1988

Where use of a private aircraft is determined to be advantageous to the government for permanent change-of-station travel, in the absence of a specific rule in the Federal Travel Regulations, travel per diem may be established by dividing the distance between the old and new duty stations by the product of the employee's average daily flight time for each whole day of flying and cruising speed of the aircraft.

CIVILIAN PERSONNEL
Relocation
Miscellaneous expenses
Reimbursement
Rates

Where use of a private aircraft is determined to be advantageous to the government for permanent change-of-station travel, miscellaneous expense reimbursement may include overnight hangar rental where required since that expense item is comparable to an airplane parking fee authorized under Federal Travel Regulations para. 1-4.1c.

CIVILIAN PERSONNEL B-230960 April 11, 1988
Compensation
Congressional details
Executive Branch personnel
Propriety

Nonreimbursable detail of two Treasury Department employees to congressional committee to assist in oversight and review of the FTS-2000 project is appropriate under Comptroller General decisions, based on agency determination that detail will further purposes for which agency's appropriations are available.

B-225918 April 14, 1988

CIVILIAN PERSONNEL

Compensation

Retroactive compensation

Eligibility

Adverse personnel actions

Classification

An employee seeks backpay for the period during which she performed the duties of a position which was later reclassified to a higher grade. The employee is not eligible for backpay since a federal employee is entitled only to the salary of the position to which the employee is appointed, regardless of duties performed. Even though a position is subsequently reclassified to a higher grade consistent with the duties the employee has been performing, such action may not be made retroactively effective. United States v. Testan, 424 U.S. 392 (1976). We find that the step III grievance decision awarding backpay to the employee is in error and may not be implemented.

CIVILIAN PERSONNEL

B-225977 April 14, 1988

Trave1

Travel expenses
Illegal/improper payments
Debt waiver

An employee, not in the Foreign Service, who was stationed in a foreign area, requests waiver of a debt created when he was erroneously authorized emergency round-trip travel to the United States through use of a Government Travel Request (GTR). There is no indication that the employee was aware he was not entitled to emergency travel at government expense or that he had any reason to question Mission and Embassy personnel who advised him and obtained the airline tickets at government expense. Therefore, we conclude that erroneous payment of his round-trip airfare in the amount of \$848.60 may be waived under 5 U.S.C. § 5584, as amended.

CIVILIAN PERSONNEL Travel Travel regulations Applicability

On September 8, 1982, 5 U.S.C. § 5728 was amended to restrict tour renewal travel entitlements for employees assigned to Alaska to not more than 2 round-trips commenced within 5 years after the date the employee first commenced any period of consecutive tours of duty in Alaska. As provided in regulations implementing the amended statute, date of assignment to Alaska for purposes of coverage under the amended statute is the date the employee commenced travel to Alaska under the terms of his service agreement, rather than the earlier date on which he signed the service agreement. Therefore, an employee commencing travel to his duty station in Alaska subsequent to the amendment is bound by the provisions of that law.

CIVILIAN PERSONNEL B-228781 April 14, 1988
Relocation
Travel expenses
Privately-owned aircraft
Mileage

Travel orders authorized an employee to be paid mileage for the use of a privately owned airplane for travel to the employee's new duty station incident to his transfer. A determination was made that use of the airplane would be advantageous to the government. The airplane was needed at the new duty station to conduct experiments and for temporary duty travel. Because travel regulations gave the employing agency discretion to authorize the mileage and the employee used the airplane for the transfer, mileage should be reimbursed to the employee.

B-229151 April 14, 1988

CIVILIAN PERSONNEL
Travel

Temporary duty
Miscellaneous expenses
Reimbursement
Telephone calls

An employee performing official travel overseas incurred expenses for several emergency telephone calls and a telegram all of which were personal to him. His claim for reimbursement of these expenses as a travel expense is denied. The Federal Travel Regulations, which are statutorily authorized and have the force and effect of law, provide in paragraph 1-6.4b that such expenses may not be charged to the government nor may they be reimbursed to the employee.

CIVILIAN PERSONNEL

B-230064 April 14, 1988

Travel
Rental vehicles
Property damages
Claims
Payments

Absent willful and wanton negligence by the government employee, a rental car company that participates under the Military Traffic Management Command agreement assumes the entire risk of direct loss or damage to its vehicle when it is rented by an authorized government employee.

B-229316 April 18, 1988

CIVILIAN PERSONNEL
Compensation
Overpayments
Error detection
Debt collection
Waiver

The government's claim against an employee for salary overpayments is waived under the authority of 5 U.S.C. § 5584, since collection action would be against equity and good conscience and not in the best interest of the United States. Overpayments resulted from an administrative error in fixing the employee's salary in his new position at the highest previous rate of his old position. Contrary to regulations, the special pay rate of his old position was included in the highest previous rate without permission of the Office of Personnel Management. The employee was not on notice of the error and not at fault for the overpayments.

CIVILIAN PERSONNEL

B-226015 April 25, 1988

Relocation

Temporary quarters
Actual subsistence expenses
Overpayments
Debt waiver

An employee, who transferred to a new duty station, was given an advance of travel funds which included funds for temporary quarters subsistence expenses. The employee is not entitled to reimbursement of temporary quarters subsistence expenses for the 45-day period after she had executed a 1-year lease on an apartment and moved her household goods into the dwelling. Furthermore, her indebtedness did not arise as a result of an erroneous authorization for temporary quarters expenses. Therefore, her indebtedness does not constitute an erroneous payment which might be subject to waiver consideration under 5 U.S.C. § 5584 (Supp. III 1985).

CIVILIAN PERSONNEL Relocation

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B-226015 Con't April 25, 1988

Temporary quarters
Actual subsistance expenses
Reimbursement
Eligibility

An employee, who transferred to a new duty station, occupied a motel room as temporary quarters for a 2-week period. The employee then executed a 1-year lease agreement on an apartment on July 12 and on the same date, moved her household goods into the apartment. The execution of a 1-year lease on the apartment and movement of her household effects into the dwelling manifest an intent on her part to occupy the apartment on other than a temporary basis. Therefore, the employee is not entitled to reimbursement of temporary quarters subsistence expenses after she occupied the apartment.

An employee, who transferred to a new duty station, was given an advance of travel funds which included funds for temporary quarters subsistence expenses. The employee is not entitled to reimbursement of temporary quarters subsistence expenses for the 45-day period after she had executed a 1-year lease on an apartment and moved her household goods into the dwelling. Furthermore, her indebtedness did not arise as a result of an erroneous authorization for temporary quarters expenses. Therefore, her indebtedness does not constitute an erroneous payment which might be subject to waiver consideration under 5 U.S.C. § 5584 (Supp. III 1985).

MILITARY PERSONNEL

MILITARY PERSONNEL

B-227583 April 13, 1988

Pay
Death gratuities
Eligibility
Statutes of limitation

Applicability

Under the Act of October 9, 1940, 54 Stat. 1061, as amended, 31 U.S.C. § 3702(b) (1986), every claim or demand against the United States cognizable by the General Accounting Office must be received in that Office within 6 years from the date it accrued or be barred from consideration. Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must have been received in this Office within the 6-year period. Accordingly, a claim for a death gratuity which arose out of a Naval Reserve member's death during World War II, which first accrued in 1945 and was filed in the General Accounting Office in 1987, is barred from consideration.

PROCUREMENT

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-228123.2 April 1, 1988 88-1 CPD 328

Where protest of agency's decision to reject bid of equal product as nonresponsive under brand name or equal invitation was sustained because it was based on a failure to meet salient characteristics that were not listed in the solicitation, but further review shows that the product in fact will not meet the agency's needs, the bidder should be reimbursed its bid preparation and protest costs.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-228909.2 April 1, 1988 88-1 CPD 329

Request for reconsideration that does not show factual or legal error, nor provide previously unavailable information affecting conclusions reached, does not provide basis for reversal or modification of prior decision. PROCUREMENT
Socio-Economic Policies
Disadvantaged business
set-asides

B-229632.2, et al. April 1, 1988 88-1 CPD 330

Use

Administrative discretion

It is not legally objectionable for solicitations issued after June 1, 1987, but prior to March 21, 1988, to be set aside for small disadvantaged business (SDB) concerns even though the product or service in question has been previously acquired successfully under a small business set—aside. Such solicitations are consistent with the interim rule implementing the Department of Defense SDB set—aside program in effect at the time those solicitations were issued; a subsequent interim rule, which does provide an exclusion from the SDB set—aside program for those procurements which have been previously set aside for small businesses, applies only to solicitations issued on or after March 21, 1988.

PROCUREMENT

B-229843 April 1, 1988

Competitive Negotiation 88-1 CPD 331

Discussion

Misleading information
Allegation substantiation

PROCUREMENT

Competitive Negotiation Offers

Price disclosure
Allegation substantiation
Evidence sufficiency

Protest is denied where record fails to support protester's contentions that it was misled during discussions into not reducing the price of its software effort or that cost information from its proposal was disclosed by the agency to the ultimate awardee under solicitation. PROCUREMENT
Competitive Negotiation
Offers
Evaluation

Cost estimates

B-229843 Con't April 1, 1988

Where evaluation scheme clearly provided that for purposes of award, proposals would be evaluated by adding option price to the price for the basic system, termed the instant contract price, no ambiguity is created by the statement elsewhere that the instant contract price would be "evaluated" where evaluation of the instant contract price clearly refers to evaluation of the cost realism of the basic system price without the option.

PROCUREMENT
Bid Protests
Allegation
Abandonment

B-229992 April 1, 1988 88-1 CPD 332

Where an agency specifically rebuts issues raised in the initial protest and a protester fails to address the agency's rebuttal in its comments on the agency's report, the issues are deemed abandoned.

PROCUREMENT

Socio-Economic Policies
Small businesses
Size determination
Pending protests
Contract awards

Award made pending an appeal of an initial adverse determination concerning small business status was proper even though the contracting officer was notified of the appeal prior to making the award.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

B-230769.2 April 1, 1988 88-1 CPD 333

A protester which is not an actual or prospective offeror in the procurement is not an interested party to protest awardee's revision after bid opening of listing of certified Indian subcontractors.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-228538.2 April 4, 1988 88-1 CPD 335

Request for reconsideration is denied where there is no showing that prior decision may have been based on legal or factual errors.

PROCUREMENT B-228938.3 April 4, 1988
Bid Protests 88-1 CPD 336
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest filed after award is untimely where the basis of protest was evident from the face of the solicitation.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-228938.3 Con't April 4, 1988

Protest that agency failed to hold meaningful discussions is denied, even though there are only conflicting statements by the agency and protester concerning whether it was orally advised of the experience deficiency in its proposal, because the agency provided the protester written notice of deficiencies in its proposal that should have led the protester into the areas of its proposal needing amplification.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Protester's allegation that agency misapplied or misinterpreted the stated evaluation criteria is denied where the record shows that agency reasonably evaluated the protester's proposal based on qualifications encompassed by the stated evaluation factors.

PROCUREMENT

Competitive Negotiation
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Technical superiority

Agency properly selected higher priced, more technically qualified proposals where the RFP advised that technical factors were far more important than price and the agency reasonably determined that the higher priced proposals had technical advantages that were consistent with the agency's needs.

PROCUREMENT
Competitive Negotiation
Offers

B-229850; B-229850.2 April 4, 1988 88-1 CPD 337

Evaluation

Administrative discretion

Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will examine the agency's evaluation only to ensure that it had a reasonable basis.

PROCUREMENT

Competitive Negotiation
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Technical superiority

Where the solicitation specifically lists cost as the least important factor of evaluation criteria, award to a higher cost but higher technically rated offeror is proper.

PROCUREMENT

Competitive Negotiation Requests for proposals Evaluation criteria Sufficiency

Protest that the Air Force failed to assign appropriate weight to evaluation criteria and subcriteria is denied where the Air Force source selection plan, written prior to closing, contained a detailed statement of evaluation standards with specific factor points assigned to each of the standards in accordance with the solicitation evaluation criteria.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-227965.5 April 5, 1988 88-1 CPD 338

Request for reconsideration is denied where there is no showing that prior decision may have been based on factual or legal errors.

PROCUREMENT B-229697 April 5, 1988
Competitive Negotiation 88-1 CPD 339
Contract awards
Propriety

A protest that the agency relaxed specifications or otherwise made concessions for the sole benefit of one offeror is denied where the evidence of record indicates that the agency accepted a proposal which conformed to all material solicitation requirements.

PROCUREMENT

Contract Management
Contract administration
Contract terms
Compliance
GAO review

Protest concerning awardee's actual compliance with its contract obligations is a matter of contract administration which is not within the General Accounting Office's bid protest function. Other protest allegations that contracting agency induced the protester, as the incumbent contractor, to increase its inventory of raw materials and equipment and that these items were subsequently confiscated by the agency are also matters of contract administration for resolution under the Disputes clause of the contract.



PROCUREMENT

B-229697 Con't April 5, 1988

Contractor Qualification Responsibility

> Contracting officer findings Affirmative determination

GAO review

Contracting officer's affirmative determination of responsibility, which found the contractor, had a current ability to perform the contract work, was reasonable where it was based on favorable preaward survey and contractor performance history.

PROCUREMENT

B-229784 April 5, 1988

Competitive Negotiation 88-1 CPD 340

Offers

Evaluation

Downgrading

Propriety

Protester's proposal was unreasonably downgraded for technical merit based on the results of a survey of references for prior contract performance, where technical evaluators noted on the scoring sheets that certain questions were "not applicable" and recorded no points for those survey questions. Since points for each of the questions were added together, rather than averaged, yielding a total cumulative point score, the "not applicable" notations did not have the intended neutral effect but rather resulted in lowering the protester's point score.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Prior contracts
Contract performance

Where technical evaluation scheme in a request for proposals contained performance under previous contracts as an evaluation factor and required offerors to submit at least two references from prior contracts, agency's technical evaluation of protester's prior performance was unreasonable where agency ignored the protester's listed prior performance, as the incumbent, for the same services with the procuring agency.

PROCUREMENT
B-230715.2 April 5, 1988
Bid Protests
B8-1 CPD 341

GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Dismissal of protest as untimely is affirmed where protester failed to file its protest with the General Accounting Office (GAO) within 10 working days of notice of initial adverse agency action on protester's initial protest to the procuring agency.

PROCUREMENT

B-230913 April 5, 1988 88-1 CPD 342

Socio-Economic Policies 88
Small businesses
Responsibility
Negative determination
GAO review

Protest from small business bidder that agency should delay making award until protester obtains necessary line of credit does not present valid basis for protest since before agency can reject protester on responsibility grounds it must refer matter to Small Business Administration (SBA); since SBA has statutory authority to determine bidder's responsibility in such circumstances, General Accounting Office generally does not consider a protest that the small business bidder improperly was found nonresponsible.

PROCUREMENT

B-230266.3 April 6, 1988 88-1 CPD 343

Bid Protests 88-1
GAO procedures
GAO decisions
Reconsideration
Additional information

The General Accounting Office Bid Protest Regulations do not permit a piecemeal presentation of evidence, information, or analyses. Where a party submits in its request for reconsideration an argument that it could have presented at the time of the protest, but did not, the argument does not provide a basis for reconsideration.

PROCUREMENT B-230266.3 Con't
Socio-Economic Policies April 6, 1988
Small businesses
Responsibility
Competency certification
GAO review

Dismissal of protest is affirmed where protester has not shown that government officials failed to consider vital information bearing on the protester's responsibility when refusing to issue a certificate of competency.

PROCUREMENT
Bid Protests
Definition

B-230764 April 6, 1988 88-1 CPD 344

Procurement by the Village of Bellevue, Michigan using funds borrowed from the Farmers Home Administration is not a federal procurement and, therefore, a protest of the award is not reviewable by the General Accounting Office.

PROCUREMENT

Bid Protests
Federal procurement regulations/laws
Applicability
GAO authority

Procurement by the Village of Bellevue, Michigan using funds borrowed from the Farmers Home Administration is not a federal procurement and, therefore, a protest of the award is not reviewable by the General Accounting Office.

PROCUREMENT
Specifications
Minimum needs

B-228187.2; B-228188.2 April 7, 1988 88-1 CPD 345

Minimum needs standards 88-1 CPD 345 Leases

Where the contracting agency improperly awarded a lease but cancellation of the lease before the end of the 1-year base period is not possible because the lease has no termination for convenience clause, the agency should not renew the lease, but instead should issue a new solicitation that accurately reflects its minimum needs.

PROCUREMENT

B-228345.2 April 7, 1988 88-1 CPD 346

Competitive Negotiation Contract awards Propriety Trade associations

There is no legal authority for the government to award a contract to an unincorporated association that has no legal existence independent of its membership and no authority to bind its membership for performance of the contract.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-228931.2 April 7, 1988 88-1 CPD 347

Request for reconsideration is denied where agency fails to present evidence that original decision may have been based on legal or factual errors. PROCUREMENT
Socio-Economic Policies
Labor standards
Construction contracts
Worker classification

Propriety

Even though a solicitation contains requirements for work in the nature of servicing and maintenance, in addition to construction work, the Service Contract Act does not apply where the proposed contract is not principally for services.

PROCUREMENT B-229813 April 7, 1988
Contractor Qualification 88-1 CPD 349
Responsibility
Contracting officer findings
Bad faith
Allegation substantiation

An affirmative determination of responsibility does not reflect bad faith or fraud where the only evidence presented is that one agency official found the awardee's performance of predecessor contract to be unsatisfactory, but record shows agency considered other positive information in making its determination.

PROCUREMENT

Contractor Qualification
Responsibility criteria
Distinctions
Performance specifications

Solicitation requirements that contractor overhaul and repair designated items in accordance with specified terms and conditions are performance requirements, not definitive responsibility criteria, and the ability to comply with these requirements is encompassed within the contracting officer's subjective responsibility determination.

PROCUREMENT

B-230044, et al. April 7, 1988 88-1 CPD 350

Socio-Economic Policies
Small business set-asides
Use

Administrative discretion

Contracting officer's determination to set 50 percent of procurements aside for exclusive small business participation is reasonable where it is supported by an analysis of past procurements and by an informal market survey. Agency need not consider whether small businesses have patent or proprietary rights allegedly necessary for performance, as these relate to responsibility, which is to be determined after the solicitation's closing date.

PROCUREMENT
Competitive Negotiation
Contract awards

B-229895 April 8, 1988 88-1 CPD 351

ontract awards
Initial-offer awards
Propriety

Award on the basis of initial proposals without discussions is proper where solicitation gives notice of that possibility and the award will result in the lowest overall cost to the government.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation
Technical acceptability

Protest that awardee's low firm, fixed-price proposal should have been rejected as technically unacceptable because the firm's proposed level of effort was substantially less than the government's estimate is denied where the protester has not demonstrated that the contracting agency unreasonably awarded the maximum possible score based on a proposal which emphasized recent relevant experience.

PROCUREMENT B-230838 April 8, 1988
Socio-Economic Policies 88-1 CPD 352
Disadvantaged business set-asides
Use
Administrative discretion

Department of Defense (DOD) set-aside program for small disadvantaged businesses which does not contain an exclusion for procurements which have been previously set aside for small businesses is a legally permissible implementation of section 1207 of the DOD Authorization Act, which specifically allows the use of less than full and open competitive procedures to meet that goal.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protest is untimely when it is filed with the General Accounting Office more than 10 days after the initial adverse agency action on the protest to the agency.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230922 April 8, 1988
88-1 CPD 354

Protest of cancellation of invitation for bids is untimely where filed more than 10 working days after basis for protest was known.

Protest of award to a lower bidder on the basis that the protester's low prices under an earlier solicitation that was canceled after bid opening were made available to the competitors has no merit, since bids are required to be opened publicly and the protester did not timely protest the cancellation.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

B-230088 April 11, 1988 88-1 CPD 355

Significant issue exemptions
Applicability

General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO Bid Protest Regulations where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest concerning firm's failure to receive solicitation materials is dismissed as untimely when not filed within 10 working days of time protester knew or should have known of basis for protest.

PROCUREMENT
Bid Protests

B-228429.6 April 12, 1988 88-1 CPD 356

GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where the protester does no more than restate arguments previously considered and raise an argument it could have raised during the original protest.

PROCUREMENT

B-229836 April 12, 1988 88-1 CPD 358

Bid Protests
GAO procedures
Interested parties

Direct interest standards

Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT

B-229951 April 12, 1988

Sealed Bidding Bids

l Bidding 88-1 CPD 359

Responsiveness
Price omission
Unit prices

Where a bid contained a total price for an additive item on a construction contract but no unit price for that work as required in a solicitation amendment, the bid is responsive, because the contracting agency did not select the additive item for award and, therefore, the failure to bid a unit price on the item would not make the bid unacceptable.

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

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Protest that the awardee did not include plant bed preparation in its bid for a construction contract as required by a solicitation amendment is denied where the awardee acknowledged receipt of the amendment, did not take any exception to the solicitation's requirements, and, therefore, was bound to perform plant bed preparation upon acceptance of the bid by the contracting agency.

PROCUREMENT Bid Protests B-208159.11 April 13, 1988 88-1 CPD

GAO procedures

Interested parties

Federal procurement regulations/laws
Amendments

General Accounting Office (GAO) supports a proposed bill to expand classes of interested parties eligible to file bid protests with GAO under Competition in Contracting Act to include federal employees affected by a contracting agency's decision to contract out for services. GAO does, however, recommend that portion of the bill which provides for review of Department of Labor wage determinations be deleted.

PROCUREMENT

Socio-Economic Policies
Labor standards
Federal procurement regulations/laws
Revision

General Accounting Office (GAO) supports a proposed bill to expand classes of interested parties eligible to file bid protests with GAO under Competition in Contracting Act to include federal employees affected by a contracting agency's decision to contract out for services. GAO does, however, recommend that portion of the bill which provides for review of Department of Labor wage determinations be deleted.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-229549.2 April 13, 1988 88-1 CPD 360

Where protester that submitted low bid after being invited to participate in converted negotiated procurement successfully challenges a proposed award to sole bidder that bid an unreasonable price under invitation for bids, and where the General Accounting Office recommended cancellation and resolicitation based on full and open competition, protester is entitled to recover the costs of filing and pursuing the protest, since such award is consistent with the broad purpose of the Competition in Contracting Act to increase and enhance competition in federal procurements.

PROCUREMENT

B-229750.3 April 13, 1988

Contractor Qualification Responsibility 88-1 CPD 361

Contracting officer findings
Affirmative determination
GAO review

Protest that low offeror in two-step sealed bidding procurement cannot adequately perform maintenance at the cost it bid concerns the offeror's responsibility and General Accounting Office does not review affirmative determinations of responsibility in the absence of conditions not present here.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-229772.2 April 13, 1988 88-1 CPD 362

B-229844 April 13, 1988

88-1 CPD 363

Request for reconsideration is denied where protester fails to show any error of law or fact warranting reversal of finding that contracting agency had presented a reasonable explanation in support of alleged unduly restrictive specification as necessary to meet its minimum needs.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Issue raised for the first time in conference comments is not for consideration when it could have been raised in the initial protest.

PROCUREMENT Contractor Qualification Licenses

Interstate transportation

Protester has failed to show how it is prejudiced by alleged ambiguity in specification in view of the contracting officer's consistent agreement with its position regarding dimensions contained in a specification drawing.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Protester fails to show that solicitation for loose-leaf binders is ambiguous where, based on a reasonable reading of the solicitation as a whole, there is no discrepancy between the required binder ring size and the approximate dimension given for binder backbone.

Solicitation for loose-leaf binders is not ambiguous despite alleged discrepancy between specification which refers to optional accessories and schedule of items which does not provide for them since order of precedence clause in solicitation resolves any such inconsistency in favor of the schedule of items.

Protester fails to show that solicitation for certificate binders is ambiguous where challenged specification calling for one-dimensional die cuts cannot reasonably be interpreted also to permit two-dimensional right angle die cuts.

PROCUREMENT B-230058 April 13, 1988
Competitive Negotiation 88-1 CPD 364
Best/final offer
Technical acceptability
Negative determination
Propriety

Inclusion of proposal in competitive range does not necessarily establish that proposal was technically acceptable, since agency may properly include proposals that may become acceptable through discussions. Subsequent rejection of proposal as technically unacceptable because best and final offer did not cure deficiency pointed out to offeror is upheld when protester has not shown that agency determination of acceptability was unreasonable.

PROCUREMENT
Competitive Negotiation
Offers

B-230058 Con't April 13, 1988

Competitive ranges Inclusion

Administrative discretion

Inclusion of proposal in competitive range does not necessarily establish that proposal was technically acceptable, since agency may properly include proposals that may become acceptable through discussions. Subsequent rejection of proposal as technically unacceptable because best and final offer did not cure deficiency pointed out to offeror is upheld when protester has not shown that agency determination of acceptability was unreasonable.

PROCUREMENT

Competitive Negotiation

Use

Criteria

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B-230790; B-230791 April 13, 1988 88-1 CPD 365

Where performance of mine subsidence surveys does not require professional architectural and engineering (A-E) services and is independent of an A-E project, competitive procurement procedures may be used in lieu of the selection method prescribed in the Brooks Act, 40 U.S.C. § 541, et seq. (1982).

PROCUREMENT

B-230790; B-230791 Con't April 13, 1988

Special Procurement Methods/Categories

Architect/engineering services

Use

Procedures

Where performance of mine subsidence surveys does not require professional architectural and engineering (A-E) services and is independent of an A-E project, competitive procurement procedures may be used in lieu of the selection method prescribed in the Brooks Act, 40 U.S.C. § 541, et seq. (1982).

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-229505.2 April 14, 1988 88-1 CPD 366

Decision sustaining in part protest challenging conduct of follow-on procurement of pistols is affirmed on reconsideration where the contracting agency presents no basis on which to alter recommendation that, in view of agency's decision to exempt awardee under initial contract from retesting and failure to justify decision to retest protester, protester's pistol should not be retested on specifications which it met in connection with initial procurement, or in the alternative, if complete retesting is required, awardee should be retested as well.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

B-230153.2 April 14, 1988 88-1 CPD 367

Dismissal of protest as academic does not provide a basis upon which bid protest costs may be awarded.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-230702 April 14, 1988 88-1 CPD 368

Protest of solicitation specifications for construction project as unduly restrictive of competition, filed by firm whose interest is that of a prospective supplier of material to the prime contractor or one of its subcontractors, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act o 1984 and General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT

Bid Protests
GAO procedures
Interested parties
Suppliers

Protest of solicitation specifications for construction project as unduly restrictive of competition, filed by firm whose interest is that of a prospective supplier of material to the prime contractor or one of its subcontractors, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

factual errors.

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Reconsideration

88-1 CPD 369

B-228045.2 April 15, 1988

Request for reconsideration is denied where argument raised by protester could and should have been advanced in initial protest, and protester has presented no evidence that prior decision was based on legal or PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-228398.2 April 18, 1988 88-1 CPD 372

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and basically disagrees with original decision and therefore fails to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT Bid Protests B-228450.3; B-228450.4

GAO procedures

April 18, 1988 88-1 CPD 373

Administrative reports
Comments timeliness

General Accounting Office (GAO) affirms its dismissal of a protest where the protester failed to submit a response to GAO concerning the contracting agency's bid protest report within 10 working days after the scheduled receipt date of the report as required by GAO's Bid Protest Regulations. See 4 C.F.R. § 21.3(k) (1988).

PROCUREMENT Bid Protests

GAO procedures

Duplicate submissions

General Accounting Office (GAO) will not consider a new protest of solicitation improprieties, even though received prior to the closing date for submission of proposals, where an identical protest had been earlier dismissed because the protester failed to timely communicate with GAO concerning the contracting agency's bid protest report.



PROCUREMENT
Bid Procedur

B-228450.3; B-228450.4 Con't April 18, 1988

GAO procedures

Protest timeliness

Apparent solicitation improprieties

General Accounting Office (GAO) will not consider a new protest of solicitation improprieties, even though received prior to the closing date for submission of proposals, where an identical protest had been earlier dismissed because the protester failed to timely communicate with GAO concerning the contracting agency s bid protest report.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy

Criteria

B-229842 April 18, 1988 88-1 CPD 374

Contracting agencies generally must hold discussions with all responsible offerors for a negotiated procurement whose proposals are within the competitive range and, in order for these discussions to be meaningful, agencies must point out weaknesses or deficiencies in proposals unless doing so would result in technical transfusion or technical leveling.

Protest is sustained where agency conducted unreasonably limited discussions with protester, whose proposal was included in the competitive range, deliberately not advising the protester that its level of effort was considered too low because the contracting officer was concerned that to do so would give the protester an opportunity to rewrite its proposal.

PROCUREMENT
Competitive Negotiation
Discussion

B-229851 April 18, 1988 88-1 CPD 375

iscussion Adequacy Criteria

Discussions were meaningful where the agency's clarifying questions accurately communicated the concerns of the evaluation panel and led the protester to the areas of its proposal in need of amplification.

PROCUREMENT

Competitive Negotiation
Requests for proposals
Evaluation criteria
Personnel experience

Agency's negotiating position requiring direct experience with specified laboratory processes is reasonably related to and encompassed by the language of the solicitation when read as a whole.

PROCUREMENT

B-229885.2 April 18, 1988 88-1 CPD 376

Bid Protests
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration which merely reiterates arguments raised in original protest is denied.

PROCUREMENT

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Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest allegation first raised in request for reconsideration is untimely where protest basis could have been advanced in original protest.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-229905.2 April 18, 1988 88-1 CPD 377

Request for reconsideration is denied where the protester essentially restates arguments previously considered in the original decision because a request for reconsideration must detail the factual and legal grounds warranting reversal of the decision, specifying errors of law made or information not previously considered.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-229966.2 April 18, 1988 88-1 CPD 378

A party that has failed to protect its interest in a procurement through the filing of a timely protest is not an interested party for purposes of arguing that the contract was awarded at an unreasonable price.

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
10-day rule

Where a protester alleges that it was unfairly excluded from a competition, the time for filing a protest runs from when the protester first learns that the agency made award without soliciting the firm, and not from when the protester subsequently receives a copy of the contract with the awardee indicating that award was made at prices higher than under the protester's prior contracts. PROCUREMENT

B-230758 April 18, 1988

Socio-Economic Policies

88-1 CPD 379

Small businesses

Competency certification

Bad faith

Allegation substantiation

Burden of showing that the Small Business Administration (SBA) acted in bad faith because the protester was not provided sufficient time to submit data required for certificate of competency (COC) application is not met where the record shows that the SBA attempted to obtain an extension of the deadline for a COC determination, but the contracting agency, in its discretion, refused to grant an extension.

PROCUREMENT

Socio-Economic Policies
Small business 8(a) subcontracting
Contract awards
Administrative discretion

The granting of an extension for Small Business Administration action on a certificate of competency referral is a matter within the discretion of the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, controlling.

PROCUREMENT

24

B-230859 April 18, 1988

Sealed Bidding
Bid opening

88-1 CPD 380

Extension
Justification
GAO review

Protest of agency's decision to postpone opening of bids is without merit. Determining appropriate bid preparation period is within contracting officer's discretion.

PROCUREMENT Competitive Negotiation

B-229815 April 19, 1988 88-1 CPD 381

Discussion Bad faith

Allegation substantiation

Allegation, based on speculation, that agency improperly had discussions with offeror after submission of best and final offers and that required certificate was submitted after closing date is denied where record shows all required documents were submitted on closing date and agency denies prompting offeror concerning need for certificate.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation
Office space

Protester's offer to lease office space, which failed to meet required handicapped accessibility requirement for elevator, was properly rejected as unacceptable when protester, in best and final offer, confirmed it could not enlarge elevator cab to comply.

Under solicitation for lease of office space, contracting agency was not required to reject awardee's offer which took exception to occupancy date and failed to provide certain building features called for in solicitation since those features were not mandatory requirements; rather, under evaluation scheme in solicitation, the extent to which an offeror took exception to those features was to be considered in determining which offer was most advantageous to the government.

PROCUREMENT
Bid Protests
GAO procedures

B-229845 April 19, 1988 88-1 CPD 382

AO procedures
Protest timeliness
10-day rule

Allegation that solicitation was ambiguous is dismissed as untimely because it was not filed within 10 working days from the date that the protester should have known of the basis of protest.

Allegation that low bidder exhibited behavior which indicated a mistake in bid is untimely when it is presented in a piecemeal fashion well after other protest allegations were filed.

PROCUREMENT
Sealed Bidding
Bids

Errors

Error substantiation

Although obviously erroneous bid may not be accepted even if verified by the bidder, there is no basis to conclude that the low bidder's bid contained an obvious error because the bidding strategy was permitted by the solicitation.

PROCUREMENT

Sealed Bidding
Contract awards
Multiple/aggregate awards

Solicitation did not prohibit multiple awards to the same bidder. Sealed-bid contracts must be awarded to the government's best price advantage and where multiple awards are not prohibited, multiple awards are to be made.

PROCUREMENT

Competitive Negotiation
Contract awards
Initial-offer awards
Discussion

B-229964 April 19, 1988 88-1 CPD 383

Propriety

An award on the basis of initial proposals without discussions is proper only where notice of this possibility is provided in the request for proposals. Also, where there is at least one lower-priced acceptable offer which would be in the competitive range, an award may not be made without discussions.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Agency evaluation of price proposals, which gives the maximum number of points to the lowest priced offer and zero points to all others, regardless of price, is improper because it is inconsistent with a statement that cost be given a weight of 20 percent of total evaluation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-230171.2, et al. April 19, 1988 88-1 CPD 384

Where agency affords protesters relief requested in protests, General Accounting Office dismisses the protests as academic.

PROCUREMENT
Special Procurement
Methods/Categories
Computer equipment/services
Contract awards
Authority delegation

Where no maximum ordering limitation or cost ceiling is contained in either a requirements contract for desktop microcomputer systems or the Delegation of Procurement Authority issued by the General Services Administration for the contract, allegation that orders under the contract for \$650,000,000 are unauthorized is without merit.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety
Evaluation errors
Materiality
B-229785 April 20, 1988
88-1 CPD 388

General Accounting Office determines award decision was inadequately supported as fair, reasonable, and consistent with the evaluation criteria, when performance testing was not conducted on an equal basis and performance evaluation criteria were treated as absolute technical acceptability requirements for protester, but not awardee.

PROCUREMENT
Competitive Negotiation
Offers

B-229785 Con't April 20, 1988

Evaluation errors
Evaluation criteria
Application

General Accounting Office determines award decision was inadequately supported as fair, reasonable, and consistent with the evaluation criteria, when performance testing was not conducted on an equal basis and performance evaluation criteria were treated as absolute technical acceptability requirements for protester, but not awardee.

PROCUREMENT B-229809 April 20, 1988
Noncompetitive Negotiation 88-1 CPD 389
Contract awards
Sole sources
Propriety

Although agency was justified in awarding a sole-source contract for boats where it reasonably determined that the urgent nature of its requirement mandated award to the only firm whose product has been tested and found to comply with the agency's needs, sole-source award was not proper to the extent that it included a quantity of boats greater than that which could be delivered before delivery could begin following a competitive procurement.

PROCUREMENT
Bid Protests
GAO procedures

B-229854.2, et al. April 20, 1988 88-1 CPD 390

Protest timeliness

Significant issue exemptions
Applicability

Untimely protest that raises issue which has been the subject of previous decisions will not be considered under the significant issue exception to the General Accounting Office timeliness requirements.

PROCUREMENT

B-230309 April 20, 1988 88-1 CPD 391

Bid Protests
GAO procedures
Preparation costs

Where a protest is dismissed as academic because corrective action is taken as requested by the protester, there is no decision on the merits and, therefore, no basis on which protest costs may be recovered.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

Protest challenging contracting agency's failure to disclose to offerors participating in a reprocurement the prices submitted by all the offerors in connection with the original procurement, and requesting that award under the reprocurement be stayed pending a decision by the Small Business Administration (SBA) on the protester's appeal of the small business size standard contained in the solicitation, is dismissed as academic because agency released the pricing information sought and the SBA has ruled on the protester's size standard appeal.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230918, et al. April 20, 1988 88-1 CPD 392

Protest alleging deficiencies in the terms of a timber sale which is filed after the date of sale is untimely under General Accounting Office's Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-230036 April 21, 1988 88-1 CPD 393

Protester that took exception to a material requirement of a solicitation is an interested party to challenge award to only acceptable offeror since negotiations would have to be reopened or the solicitation canceled and the requirement resolicited if the protest were sustained.

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Competition enhancement

General Accounting Office (GAO) will not consider argument that agency's definition of its minimum needs was not sufficiently restrictive since GAO role in resolving bid protests is to promote full and open competition.

PROCUREMENT B-230036 Con't
Contractor Qualification April 21, 1988
Responsibility
Contracting officer findings
Affirmative determination

GAO review

General Accounting Office will not review protest that awardee cannot perform in accordance with solicitation's requirements, which is in effect a challenge to the contracting officer's affirmative determination of responsibility, absent a showing of fraud or bad faith or that definitive responsibility criteria have not been applied.

PROCUREMENT B-229568.2 April 22, 1988
Bid Protests 88-1 CPD 394
Allegation substantiation
Lacking
GAO review

Where there is no indication that amounts allocated for engineering labor and overhead are insufficient to correct any deficiencies in awardee's proposal, protest that agency failed to consider the costs of correcting such deficiencies is denied.

PROCUREMENT

Bid Protests
Federal procurement regulations/laws
Revision
Additional criteria

Agency cost realism analysis that applied rates recommended by the Defense Contract Audit Agency to an agency-generated estimate of the labor hours needed to complete contract performance had a reasonable basis.

PROCUREMENT B-229568.2 Con't
Bid Protests April 22, 1988
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest against use of the same individuals to conduct both cost and technical evaluations is untimely where solicitation indicated that the agency intended to appoint one source evaluation committee to review all award factors. In any event, the record fails to indicate any evidence of bias by the evaluation team.

PROCUREMENT

Bid Protests
Non-prejudicial allegation
GAO review

Where record shows that neither awardee nor protester made an unqualified promise to comply with zoom range specifications in contract for design, development and fabrication of color television camera for space shuttle, protester clearly was not prejudiced by agency decision to accept awardee proposal pending decision whether to modify requirements.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-229568.2 Con't April 22, 1988

Agencies are not obligated to afford offerors all encompassing discussions, only to lead offerors generally into the areas of their proposals which require amplification.

Where, except for deficiencies reflecting upon the protester's basic understanding of problems involved in contractual effort, record demonstrates that major deficiencies were discussed with protester, protest that agency failed to hold meaningful discussions is denied.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

Allegation that cost evaluation did not consider cost of possible patent infringement is without merit where protester's allegation is based on mere speculation and agency and awardee flatly deny patent infringement issue exists.

PROCUREMENT Bid Protests

B-229884 April 22, 1988 88-1 CPD 395

GAO procedures
Protest timeliness
Apparent solicitation improprieties

Contentions that agency coerced protester into changing technical approach during negotiations and that agency improperly solicited second round of best and final offers are untimely where protest was not filed prior to next closing date for receipt of proposals.



PROCUREMENT Bid Protests B-229884 Con't April 22, 1988

Non-prejudicial allegation GAO review

Protest that solicitation should be amended to remove basic development requirements and low rate production options because funding may not be available for production options and follow-on contracts for long term production is denied. Although protester speculates that its competitors, who were aware that funding might not be available, may have submitted unrealistically low prices knowing they would not have to perform the work, it has submitted no evidence that its competitors have superior knowledge of possible funding restrictions or that it could submit a more competitive proposal under a revised solicitation.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation
Cost data
Certification

Protest that agency should not have requested certification of cost or pricing data is denied where contracting officer determined, in accordance with regulations, that award selection was not based on adequate price competition since under solicitation price was not the primary basis for award.

PROCUREMENT
Competitive Negotiation
Offers

B-229884 Con't April 22, 1988

Price disclosure
Allegation substantiation
Evidence sufficiency

Where articles in trade publications submitted by protester to show agency disclosure of protester's prices do not include prices and do not attribute information regarding pricing to agency, and agency denies disclosing prices, protester's contention in this regard is unsupported.

PROCUREMENT

B-229837 April 25, 1988

Sealed Bidding

88-1 CPD 396

Invitations for bids
Post-bid opening cancellation
Justification

Evaluation criteria

PROCUREMENT

Sealed Bidding
Invitations for bids
Post-bid opening cancellation
Justification
Price reasonableness

Cancellation, after bid opening, of solicitation for cleanup of contaminated materials was not unreasonable where solicitation was so generally worded as to prompt inquiries from bidders as to the permissible method of disposal; apparently conflicting, and in some cases, erroneous advice was given; there was a wide disparity in bid prices; and even the protester's low bid was 20 percent higher than the government estimate, which has not been shown to be invalid as to the protester's proposed method of disposal.

PROCUREMENT .

B-229969 April 25, 1988 88-1 CPD 397

Competitive Negotiation 88-1
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

Where solicitation provided for the technical score received by a proposal to be divided by the total proposed price to obtain a price/quality point ration-price per technical point--agency did not act unreasonably in selecting the low-priced proposal over technically superior proposal whose total price was more than twice that proposed by the awardee and whose price per technical point was at least 40 percent higher than the awardee's price.

PROCUREMENT

Socio-Economic Policies
Preferred products/services
Domestic sources
Compliance

Protest that agency failed to obtain waiver required under the Arms Export Control Act, 22 U.S.C. § 2791(c), to permit competition by other than domestic firms, provides no basis upon which to object to award to El Salvadoran firm where record shows procurement was covered by applicable waiver.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-230676 April 25, 1988 88-1 CPD 398

Protest, the sole allegation of which was that the contracting agency was proceeding with an award of a contract without considering protester's offer of an alternate part to that specified because the agency did not have "enough time" to do so is dismissed as academic since agency advises that it has, in fact, evaluated protester's proposal and determined it to be technically unacceptable.

PROCUREMENT B-230750 April 25, 1988
Bid Protests 88-1 CPD 399
Non-prejudicial allegation
GAO review

Protest that low bidder used a commissioned agent and failed to submit with its bid a Standard Form (SF) 119 describing that arrangement is dismissed because there has been no allegation that the commissioned agent is not a bona fide employee or agent of the bidder and the regulations do not require the submission of SF 119 with a bid.

PROCUREMENT B-230795.2 April 25, 1988
Socio-Economic Policies 88-1 CPD 400
Small business 8(a) subcontracting
Administrative policies
Compliance
GAO review

The General Accounting Office will not review the Small Business Administration's compliance with its own internal guidelines for the Small Business Act's section 8(a) program absent a showing of possible fraud or bad faith on the part of government officials.



PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-228232.3 April 26, 1988 88-1 CPD 401

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and disagrees with original decision and therefore fails to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT

Contractor Qualification 88-1 CPD 402

Responsibility

Contracting officer findings

Negative determination

GAO review

PROCUREMENT
Sealed Bidding
Contracting officer duties
Responsibility criteria
Pre-award surveys

Protest against negative responsibility determination is denied where the determination reasonably was based on a current negative preaward survey report that found protester had an unsatisfactory record of prior performance.

PROCUREMENT
Bid Protests
GAO procedures

B-228915.3 April 26, 1988 88-1 CPD 403

Protest timeliness
Apparent solicitation improprieties

Protest allegations concerning improprieties in solicitation amendment first raised in protester's comments to agency report are untimely as Bid Protest Regulations require such allegations to be filed not later than the next closing date for receipt of proposals.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Under General Accounting Office Bid Protest Regulations protests based upon other than alleged solicitation improprieties must be filed not later than 10 days after protest basis is known or should have been known. Protester's allegation that it was entitled to more time to perform operational demonstration first raised in protester's comments on agency report is untimely when grounds for the allegations were evident almost 2 months before protest allegation was raised.

PROCUREMENT
Competitive Negotiation
Offers

B-228915.3 Con't April 26, 1988

Evaluation
Technical acceptability
Tests

Protest that none of the designated agency representatives observed operational demonstration (OD) as required and therefore results of OD were not properly certified is denied where protester does not establish that attendance of such personnel was required by OD instructions and contracting officer did certify the results as authorized. Further record does not support protester's contention that presence of specific agency representative would have in any way altered the results of the test.

While agency did not follow operational demonstration (OD) instructions requiring protester to certify final OD results at its conclusion, protest that results are therefore invalid is nevertheless denied where record supports agency's determination that protester failed to successfully demonstrate certain requirements.

While protester has established that minor procedural flaws existed in final operational demonstration (OD), the record is clear that agency properly determined that protester failed each of the disputed OD requirements. Therefore rejection of protester's proposal was proper under the OD instructions which required offerors to pass all requirements to be acceptable.

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PROCUREMENT
Competitive Negotiation
Offers

B-228915.3 Con't April 26, 1988

Evaluation errors
Non-prejudicial allegation

While protester has established that minor procedural flaws existed in final operational demonstration (OD), the record is clear that agency properly determined that protester failed each of the disputed OD requirements. Therefore rejection of protester's proposal was proper under the OD instructions which required offerors to pass all requirements to be acceptable.

PROCUREMENT
Bid Protests
Conferences

B-229749.3 April 26, 1988 88-1 CPD 404

Justification

Request for conference in connection with request for reconsideration is denied since the matter can be expeditiously resolved without a conference.

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules where the issue raised is not of widespread interest to the procurement community.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

B-229749.3 Con't April 26, 1988

Request for reconsideration of prior decision dismissing protest as untimely is denied where protester has presented no basis for reversing conclusion that protester failed to diligently pursue information that

PROCUREMENT

B-229767.2 April 26, 1988

Bid Protests

88-1 CPD 405

GAO procedures

Protest timeliness

would form the basis of its protest.

Apparent solicitation improprieties

Post-award protest challenging propriety of or need for particular technical requirements is untimely under Bid Protest Regulations, which require that protests of alleged improprieties apparent on the face of a solicitation be protested before the closing date for receipt of initial proposals.

PROCUREMENT

Competitive Negotiation
Discussion
Adequacy
Criteria

An agency satisfies requirement to conduct meaningful discussions where it advises offeror of proposal deficiencies and affords offeror an opportunity to address these defects through the submission of best and final offer.

PROCUREMENT
Competitive Negotiation
Offers

B-229767.2 Con't April 26, 1988

Evaluation

Downgrading

Propriety

Agency's downgrading of proposal under evaluation criteria measuring conformance with specifications is not unreasonable where the magnitude of the point reduction was consistent with the defects found in the offeror's proposal.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

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B-229839.2 April 26, 1988 88-1 CPD 406

A contractor adversely affected by a prior General Accounting Office decision is not eligible to request reconsideration of that decision where the firm was notified of the original protest but chose not to exercise its right to comment on the issues raised in the protest.

PROCUREMENT B-229894 Apr. 26, 1988
Bid Protests 88-1 CPD 407
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Allegation that solicitation allowed insufficient time for bid preparation, which concerns an alleged defect apparent on the face of the solicitation, is untimely and will not be considered where raised after bid opening. PROCUREMENT
Sealed Bidding

B-229894 Con't April 26, 1988

Bids

Clerical errors
Error correction
Propriety

Agency's action in allowing bidder to correct solicitation number on the outside of its bid envelope is unobjectionable where the bid envelope itself remained sealed until bid opening.

PROCUREMENT

Sealed Bidding

Competitive advantage

Non-prejudicial allegation

Fact that one bidder has potentially beneficial information as to correct wage rate in advance of resolicitation is unobjectionable where the information was not obtained as a result of any improper action by the agency.

PROCUREMENT

Sealed Bidding
Contract awards
Government delays
Propriety

Failure by agency to make award within 9 calendar days of bid opening does not constitute unreasonable delay in making award; notice of erroneous wage determination in the solicitation justifies delay in making award until proper course of action is decided.

PROCUREMENT
Sealed Bidding
Invitations for bids
Post-bid opening cancellation
Justification
Sufficiency

Cancellation of invitation for bids after bid opening is justified where Department of Labor informed the agency that the wage determination used was erroneous, and use of proper, lower wage determination will result in cost savings to the government; it is not the function of General Accounting Office to determine the correctness of a wage determination.

B-229915 April 26, 1988

88-1 CPD 408

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Objections to matters occurring during the course of agency site visit are untimely raised, and will not be considered on the merits, when protested more than 10 working days after the site visit.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

PROCUREMENT
Competitive Negotiation

Offers Evaluation

Administrative discretion

Protest of awardee's alleged failure to conform exactly with minimum "quality" standards is denied, because inherent in the designation of a feature as a "quality" standard is the expectation that the feature will be appraised subjectively in terms of degree of desirability, excellence, or suitability, and the agency's appraisal appears reasonable.

PROCUREMENT

Competitive Negotiation Offers

Commercial products/services
Administrative determination

Agency reasonably concluded that awardee offered a commercial product (i.e., a product purchased by entities other than the federal government) where evidence indicated that the awardee marketed the offered product to state and local governments.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Cost estimates

B-229915 Con't April 26, 1988

Solicitation for work stations permitted a firm to offer a configuration that included certain unfinished components. Agency properly evaluated price of protester's work station configuration based on all finished components, however, because that is how the protester configured the work stations in its offer.

PROCUREMENT
Bid Protests
GAO procedures

B-230026; B-230026.3 April 26, 1988 88-1 CPD 409

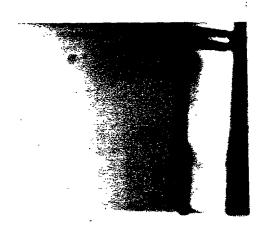
Interested parties
Direct interest standards

Protester is not an "interested party" under General Accounting Office Bid Protest Regulations to protest decision to request another round of best and final offers after contract award because, assuming the protest was sustained, the firm would not be in line for award.

PROCUREMENT

Competitive Negotiation
Best/final offers
Multiple offers
Justification

There is nothing wrong with requesting more than one round of best and final offers (BAFO) where a valid reason exists to do so. Changes in contract performance period and other contract terms provide adequate justification for further round of BAFO.



PROCUREMENT

B-230026; B-230026.3 Con'

Competitive Negotiation Contract awards April 26, 1988

Administrative discretion Cost/technical tradeoffs

Cost savings

Although solicitation provided that technical factors would be weighted more than price, agency may award to lower technical, lower cost offeror instead of higher cost, higher technically scored offeror, where the contracting officer reasonably determines that there is no significant technical difference between proposals and that award to lower cost offeror is most advantageous to government.

PROCUREMENT

B-230095.2 April 26, 1988

Bid Protests
Moot allegation
GAO review

88-1 CPD ___

Request for reconsideration of advance decision on the propriety of paying requestor's claim is dismissed as academic where the agency, in accordance with the prior decision, decides to pay the claim.

PROCUREMENT

B-230958 Apr. 26, 1988

Sealed Bidding

88-1 CPD 410

Bids

Responsiveness

Brand name/equal specifications Salient characteristics

Under a brand name or equal invitation for bids, a bid that proposed allegedly equal equipment but did not describe modifications necessary to provide the listed salient characteristics lacked a basis upon which agency could determine the equality of the offered product, and therefore was nonresponsive.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230961.2 April 26, 1988 88-1 CPD 411

Protest filed more than 10 days after protester's office received denial of agency-level protest is untimely even though the protester's vice president was not aware of the initial adverse agency action until 2 weeks after it was received.

PROCUREMENT
Bid Protests
GAO procedures

B-229918; B-229918.2 April 27, 1988 88-1 CPD 412

Interested parties
Direct interest standards

Protester who would not be in line for award even if protest were sustained does not have a direct economic interest in the protested agency action and is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1987).

PROCUREMENT

Competitive Negotiation
Offers
Cost realism
Evaluation
Administration discretion

Agency reasonably determined that awardee's price, which was lower than government's estimate, was realistic where awardee, a municipality, operates without profit margin and may benefit from economies of scale due to its existing operations.



PROCUREMENT

B-229918; B-229918.2 Con't

Contract Management

April 27, 1988

Contract administration
Contract terms

Compliance GAO review

Protest that awardee will not comply with Buy American Act is matter of contract administration and is not for consideration under General Accounting Office's bid protest function.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest questioning awardee's ability to achieve required levels of contract performance is challenge to contracting officer's affirmative determination of responsibility and will not be considered where there is no showing of fraud or bad faith by procurement officials and no failure to apply definitive responsibility criteria.

PROCUREMENT
Sealed Bidding

B-230056 April 28, 1988 88-1 CPD 413

Acceptance time periods
Extension
Agency notification

It is the responsibility of the firm that desires to extend its bid acceptance period to communicate this, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer an intent to extend based on some other affirmative step taken by the bidder that provides clear evidence of an intent to extend; because the protester did not do so here, the protest is denied.

PROCUREMENT
Sealed Bidding
Contract awards
Government delays
Propriety

B-230150.4 April 28, 1988 88-1 CPD 414

An agency has an obligation to fully consider the allegations of an agency-level protest and the impending expiration fiscal year funds does not require the agency to circumvent its normal administrative procedures for resolving the protest.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-230947 April 28, 1988 88-1 CPD 415

Protester is not an interested party to protest award to an approved source, since even if the protest was sustained, the protester would not be eligible for award because it is not an approved source for the needed product. PROCUREMENT

Bid Protests

GAO procedures

Interested parties

Direct interest standards

Line items

A protester is not an interested party under the General Accounting Office's Bid Protest Regulations where it is the fourth low offeror and would not be in line for award should its protest against the award be sustained.

PROCUREMENT B-231030 April 28, 1988
Competitive Negotiation 88-1 CPD 416
Offers
Price omission

Proposal that did not include a price for a line item did not meet material requirement of the RFP and was properly rejected where RFP informed offerors that a single award for all items might be made.

PROCUREMENT
Bid Protests
GAO procedures
Agency notification

B-227022.6 April 29, 1988
88-1 CPD 417

Dismissal of protest for failure to file a copy with the contracting agency within 1 working day after filing of protest with the General Accounting Office is affirmed on second reconsideration, since regulations clearly state that the agency must receive a copy of the protest within 1 day, not that a protester must merely transmit the copy.

PROCUREMENT
Bid Protests

B-227022.6 Con't April 29, 1988

GAO procedures

Protest timeliness

Significant issue exemptions
Applicability

Significant issue exception to the filing deadlines of General Accounting Office Bid Protest Regulations does not apply to the requirement to timely furnish the contracting agency a copy of the protest.

PROCUREMENT

B-228501.2 April 29, 1988

Bid Protests

88-1 CPD 418

GAO procedures
Preparation costs

PROCUREMENT

Competitive Negotiation

Offers

Preparation costs

Protester is entitled to recover the costs of proposal preparation and of filing and pursuing its protest, including attorneys' fees, where, although given an opportunity to compete for a subsequent contract, it has unreasonably been excluded from a significant portion of prior contract.

PROCUREMENT

B-229622.2 April 29, 1988 88-1 CPD

Bid Protests

GAO procedures

GAO decisions
Reconsideration

Request for reconsideration is denied where it raises no factual or legal grounds other than those considered initially and indicates only disagreement with initial decision denying protest.

PROCUREMENT
Competitive Negotiation
Offers

B-230194, et al. April 29, 1988 88-1 CPD 419

B-231087 April 29, 1988

B-231127 April 29, 1988

88-1 CPD

88-1 CPD

Evaluation
Administration discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness

10-day rule
Adverse agency actions

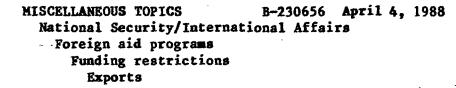
General Accounting Office will not consider merits of protest filed after adverse action on a protest to the contracting agency where the agency-level protest was untimely.

PROCUREMENT
Competitive Negotiation
Best/final offers
Late submission
Rejection

Propriety

Protest that a late, hand-carried best and final offer was improperly rejected is dismissed where the protester cannot attribute the lateness to any fault of the government or otherwise establish such rejection to be unreasonable.

MISCELLANEOUS TOPICS



Section 569 of the Foreign Operations, Export Assistance and Related Programs Appropriations Act, 1988, Pub. L. No. 100-202, § 101(e), 101 Stat. 1329-131, restricts "United States assistance . . . for Haiti." Assistance is not defined, but the section provides that the term does not include seven itemized programs. The exemption list does not include either the Peace Corps or the Overseas Private Investment Corporation (OPIC). The statute provides no basis to decide that the Peace Corps or OPIC do not fall within its broad prohibition, since these programs constitute "United States assistance."

MISCELLANEOUS TOPICS B-229258 April 14, 1988
National Security/International Affairs
Executive powers
National emergencies
Private property

Section 1242(a) of Title 46 provides the Secretary of Transportation with the authority, under specified conditions to requisition vessels "owned by citizens of the United States." This term is defined in the Merchant Marine Act of 1936, as amended, 46 U.S.C. § 1244(c), to include a corporation only if the corporation meets the requirements of Section 802 of Title 46. Among other things, Section 802 states that to qualify as a citizen, a corporation "must be organized under the laws of the United States or of a State, Territory, District, or possession thereof...." Accordingly, a vessel is within the scope of the requisitioning authority only if it owned by a corporation meeting all the requirements of Section 802 of Title 46.

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